

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KRISTOPHER KEALOHA)	CIVIL NO. 05-00009 ACK KSC
)	
Plaintiff,)	REPORT OF THE SPECIAL
)	MASTER REGARDING BILL OF
vs.)	COSTS
)	
STATE OF HAWAII, DEPARTMENT)	
OF PUBLIC SAFETY, AND LEE)	
FIELDS,)	
)	
Defendants.)	
_____)	

REPORT OF THE SPECIAL MASTER REGARDING BILL OF COSTS

On May 14, 2007, Defendants State of Hawaii, Department of Public Safety, and Lee Fields ("Defendants") filed Defendants' Bill of Costs ("Bill of Costs"). Defendants request that the Court tax costs in the amount of \$1,718.87 against Plaintiff Kristopher Kealoha ("Plaintiff"). On May 30, 2007, Plaintiff filed Objections to Defendants' Bill of Costs ("Objections").¹

¹Plaintiff filed his Objections to Bill of Costs sixteen (16) days after he was served with Defendants'

Defendants, as the prevailing party in this action, seek the following costs: (1) \$159.00 for clerk and marshal fees; and (2) \$1,559.87 for transporting inmate Kristopher Kealoha to court from Halawa Correctional Facility on April 17 and 18, 2007. Plaintiff objects to all costs and claims that he should not be required to pay Defendants' costs because he is indigent.

Under Federal Rule of Civil Procedure ("Rule") 54(d), costs are allowed as a matter of course to the prevailing party unless the court otherwise directs. Fed. R. Civ. P. 54(d). While courts have discretion to award costs pursuant to Rule 54(d), courts may only tax the costs specified in 28 U.S.C. § 1920. See Yasui v. Maui Electric Co., Ltd., 78 F. Supp. 2d 1124, 1126 (D. Haw. 1999).

Although Rule 54(d) creates a presumption in favor of awarding costs, the losing party may overcome

Bill of Costs and therefore his Objections were untimely filed. Local Rule 54.2(d) requires the party against whom costs are claimed to file objections within eleven (11) days after being served.

that presumption by showing why costs should not be awarded. Carter v. Univ. Of Haw., 176 Fed. Appx. 815, 816 (9th Cir. 2006). Courts have considered the losing party's financial resources, misconduct on the part of the prevailing party, the importance and complexity of the issues, the merit of plaintiff's case, and the chilling effect on future civil rights litigants of imposing high costs when deciding to deny costs. Save Our Valley, v. Sound Transit, 335 F.3d 932,945-946 (9th Cir. 2003).

While the record shows that Plaintiff is of limited resources,² the record also shows that Plaintiff's case was based on his own incredible testimony concerning the dates and events crucial to his lawsuit. See Findings of Fact, Conclusions of Law, and Decision ¶32, ¶36, and ¶37. In addition, there is no evidence of any misconduct on the part of the

²Plaintiff filed an In Forma Pauperis application on 6/01/2007. Based on the information contained in the application, Plaintiff appears to be indigent. For example, Plaintiff's average monthly deposit is \$36.67.

Defendants. Finally, the imposition of costs in this case should not have a chilling effect on future civil rights litigants, and it might encourage litigants to "exercise discretion and judgment in their litigious activities and accept the consequences of their costly lawsuit." McGill v. Faulkner, 18 F.3d 456, 460 (7th Cir. 1994). For the aforementioned reasons, Plaintiff, despite his indigence, has failed to overcome the presumption in favor of awarding costs under Rule 54(d).

Defendants seek a total of \$1,718.87 in costs representing the fees of the clerk and marshal (\$159.00) and the cost of transporting inmate-plaintiff Kristopher Kealoha to and from Halawa Correctional Facility (\$1,559.87). The Court has the authority to tax costs for fees of the clerk and marshal under 28 U.S.C. § 1920(1). Accordingly, the Court FINDS and RECOMMENDS that costs for fees of the clerk and marshal be taxed against Plaintiff.

Regarding the transport costs requested, Defendants do not cite to any authority that justifies

an award of these costs. While 28 U.S.C. § 1920(3) and Local Rule 54.2(f)(3) allow for transport costs of witnesses, they do not authorize transport costs of parties to and from prison in order to participate in litigation. Since the Court is not aware of any rule authorizing an award of costs associated with transporting a party-litigant to and from prison, the Court declines to tax such costs. See Sales v. Marshall 843 F.2d 115, 120 (6th Cir. 1989) (holding that 28 U.S.C. § 1920 and § 1821 do not authorize a district court to tax costs associated with transporting a prisoner-litigant from prison to court). Consequently, the Court FINDS and RECOMMENDS that Defendants' request for costs associated with the transportation of Plaintiff-inmate be DENIED.

Accordingly, the Court finds that Defendants should be awarded \$159.00 for clerk and marshal fees pursuant to 28 U.S.C. § 1920(1). The Court hereby FINDS and RECOMMENDS that the Clerk be directed to tax costs in the amount of \$159.00 against Plaintiff.

IT IS SO ORDERED.

Dated: Honolulu, Hawaii, June 14, 2007.




Kevin S.C. Chang
United States Magistrate Judge

Civ. No. 05-00009 ACK-KSC; KRISTOPHER KEALOHA V. STATE OF HAWAII, DEPARTMENT OF PUBLIC SAFETY, AND LEE FIELDS, REPORT OF THE SPECIAL MASTER REGARDING BILL OF COSTS